

SECTION C

DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

STATUTORY AUTHORITY

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Priorities and Allocations Provisions

**DEFENSE PRODUCTION ACT of 1950, as AMENDED
(50 U.S.C. App. 2061 et seq.)**

As of December 18, 1995

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Section 101. Priorities and Allocations.

(a) *National defense.* The President is hereby authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

(b) *Control of distribution.* The powers granted in this section shall not be used to control the general distribution of any material in the civilian market unless the President finds (1) that such material is a scarce and critical material essential to the national defense and (2) that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

(c) *Maximize domestic energy supplies.*

(1) Notwithstanding any other provision of this Act, the President may, by rule or order, require the allocation of, or the priority performance under contracts or orders (other than contracts of employment) relating to, materials, equipment, and services in order to maximize domestic energy supplies if he makes the findings required by paragraph (2) of this subsection.

(2) The authority granted in this subsection may not be used to require priority performance of contracts or orders, or to control the distribution of any supplies of materials, services, and facilities in the marketplace, unless the President finds that --

(A) such materials, services, and facilities are scarce, critical, and essential (i) to maintain or expand exploration, production, refining, transportation; (ii) to conserve energy supplies, or (iii) to construct or maintain energy facilities; and

(B) maintenance or expansion of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection.

(3) During any period when the authority conferred by this subsection is being exercised, the President shall take such action as may be appropriate to assure that such authority is being exercised in a manner which assures the coordinated administration of such authority with any priorities or allocations established under subsection (a) of this section and in effect during the same period.

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Section 103. Willful violations. Any person who willfully performs any act prohibited or willfully fails to perform any act required, by the provisions of this title or any rule, regulation or order thereunder, shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

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Section 702. Definitions. For purposes of this Act, the following definitions shall apply:

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(9) *FACILITIES* -- The term "facilities" includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

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(11) *INDUSTRIAL RESOURCES* -- The term "industrial resources" means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) needed to establish or maintain an efficient and modern national defense industrial capacity.

(12) *MATERIALS* -- The term "materials" includes: (A) any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and (B) any technical information or services ancillary to the use of such materials, commodities, articles, components, products, or items.

(13) *NATIONAL DEFENSE* -- The term "national defense" means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 *et seq*].

(14) *PERSON* -- The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.

(15) *SERVICES* -- The term "services" includes any effort that is needed for or incidental to: (A) the development, production, processing, distribution, delivery, or use of an industrial resource . . .; or (B) the construction of facilities.

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Section 704. Regulations and Orders.

(a) *In General* -- Subject to section 709 (Public Participation in Rulemaking) and subsection (b) (Procurement Regulations), the President may prescribe such regulations and issue such orders as the President may determine to be appropriate to carry out this Act.

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Section 705. Compliance and Enforcement.

(a) *General provisions.* The President shall be entitled, while this Act is in effect and for a period of two years thereafter, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act and the regulations or orders issued thereunder. The President shall issue regulations ensuring that the authority of this subsection will be utilized only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority, and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency. In case of contumacy by, or refusal to obey a subpoena served upon, any person referred to in this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the President, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) *Production of records.* The production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person usually keeps them, if prior to the return date specified in the regulations, subpoena, or other document issued with respect thereto, such person furnishes the President with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the President as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(c) *Willful violations.* Any person who willfully performs any act prohibited or willfully fails to perform any act required by the above provisions of this section, or any rule, regulation, or order thereunder, shall upon conviction be fined not more than \$10,000 or imprisoned for not more than one year or both.

(d) *Confidentiality of information.* Information obtained under this section which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the national defense, and any person willfully violating this provision shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(e) *Record of Testimony.* Any person subpoenaed under this section shall have the right to make a record of his testimony and to be represented by counsel.

Section 706. Injunctive relief and jurisdiction of the federal courts.

(a) *Injunctions.* Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the President that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted without bond.

(b) *Jurisdiction.* The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this Act or any rule, regulation, order, or subpoena thereunder, and of all civil actions under this Act to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, order, or subpoena thereunder. . . .

Section 707. Exculpatory provision. No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a rule, regulation, or order issued pursuant to this Act notwithstanding the any such rule, regulation,

or order shall thereafter be declared by judicial or other competent authority to be invalid. No person shall discriminate against orders or contracts to which priority is assigned or for which materials or facilities are allocated under title I of this Act or under any rule, regulation, or order issued thereunder, by charging higher prices or by imposing different terms and conditions for such orders or contracts than for other generally comparable orders or contracts, or in any other manner.

Priorities Provisions

**SECTION 18 of the SELECTIVE SERVICE ACT of 1948
(50 U.S.C. App. 468)**

Utilization of Industry

(a) Placement of orders.

Whenever the President . . . determines that it is in the interest of the national security for the Government to obtain prompt delivery of any articles or materials the procurement of which has been authorized by the Congress exclusively for the use of the armed forces of the United States, . . . he is authorized, through the head of any Government agency, to place with any person operating a plant, mine, or other facility capable of producing such articles or materials an order for such quantity of such articles or materials as the President deems appropriate

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(b) Precedence of Government placed orders.

It shall be the duty of any person with whom an order is placed pursuant to the provisions of subsection (a) of this section, (1) to give such order such precedence with respect to all other orders (Government or private) theretofore or thereafter placed with such person as the President may prescribe, and (2) to fill such order within the period of time prescribed by the President or as soon thereafter as possible.

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(f) Penalties.

Any person, or any officer of any person as defined in this section, who willfully fails or refuses to carry out any duty imposed upon him by subsection (b) of this section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than three years, or by a fine of not more than \$50,000, or by both such imprisonment and fine.

(g) Definitions.

(1) As used in this section --

(A) The term "person" means any individual, firm, company, association, corporation, or other form of business organization.

(B) The term "Government agency" means any department, agency, independent establishment, or corporation in the Executive branch of the United States Government.

(2) For the purpose of this section, a plant, mine, or other facility shall be deemed capable of producing any articles or materials if it is then producing or furnishing such articles or materials or if the President . . . determines that it can be readily converted to the production or furnishing of such articles or materials.

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Note: Because the priorities authority of the Selective Service Act is limited as compared to the priorities authority of the Defense Production Act (e.g., procurement of articles or materials exclusively for use by U.S. armed forces, no protection against claims, no civil injunction provision), the Selective Service Act authority will be used only when the Defense Production Act authority has lapsed.

Civil Emergency Preparedness Provisions

**SECTION 602 of the ROBERT T. STAFFORD
DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT
(Stafford Act)**

42 U.S.C. 5195a

Section 602. Definitions.

(a) *Definitions* -- For purposes of this title only:

(1) Hazard -- The term "hazard" means an emergency or disaster resulting from--

(A) a natural disaster; or

(B) an accidental or man-caused event.

(2) Natural Disaster -- The term "natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons.

(3) Emergency Preparedness -- The term "emergency preparedness" means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Such term includes the following:

(A) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the non-military evacuation of civil population).

(B) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(C) Measures to be undertaken following a hazard (including activities for fire fighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

(4) Organizational Equipment -- The term "organizational equipment" means equipment determined by the Director to be necessary to an emergency preparedness organization, as distinguished from personal equipment, and of such a type or nature as to require it to be financed in whole or in part by the Federal Government. Such term does not include those items which the local community normally uses in combating local disasters, except when required in unusual quantities dictated by the requirements of the emergency preparedness plans.

(5) Materials -- The term "materials" includes raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for emergency preparedness.

(6) Facilities -- The term "facilities", except as otherwise provided in this title, includes buildings, shelters, utilities, and land.

(7) Director -- The term "Director" means the Director of the Federal Emergency Management Agency.

(8) Neighboring Countries -- The term "neighboring countries" includes Canada and Mexico.

(9) United States and States -- The terms "United States" and "States" includes the several States, the District of Columbia, and territories and possessions of the United States.

(10) State -- The term "State" includes interstate emergency preparedness authorities established under section 611(k) [not included in this reprint].

(b) *Cross Reference* -- The terms "national defense" and "defense" as used in the Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.) includes emergency preparedness activities conducted pursuant to this title.